



128 Dorrance Street, Suite 400  
Providence, RI 02903  
Phone: (401) 831-7171  
Fax: (401) 831-7175  
[www.riaclu.org](http://www.riaclu.org)  
[info@riaclu.org](mailto:info@riaclu.org)

**ACLU OF RI POSITION: AMEND**

**TESTIMONY ON 21-H 6122,  
ARTICLE 6, SECTION 4  
RELATING TO HEALTH DATA FEES  
March 30, 2021**

This proposed section of Article 6 [beginning on Page 5, line 20 of the Article] would allow the Department of Health to “establish reasonable fees for processing special data analysis of health data.” The data at issue is defined as information that is “not ordinarily kept in the course of business by the department of health and not otherwise subject to the state’s access to public records act,” and so we recognize the Department’s legitimate interest in charging costs for this APRA-excepted work. We also applaud the proposal’s requirement that the results of any such analyses be deemed a public record once completed [Page 5, lines 33-34].

However, we would ask the Committee and Department to consider two amendments in order to help ensure that the data analysis process is undertaken in an equitable manner. First, the proposal leaves it to the agency’s “sole discretion” to decide whether to process a request for special data analysis. At a minimum, we believe that, in denying a request, the Department should be required to articulate its reasons for doing so. This minimal amount of transparency is important to ensure that the agency is not selectively rejecting requests based on, say, who is requesting the analysis or whether the outcome of the analysis might put the state in a bad light.

Second, the proposal gives the DOH director carte blanche authority to decide whether to waive the fees for running the request. Once again, to avoid allegations of partiality, we would urge that the language be amended to require that reasons be given for making this decision. We would also suggest an amendment to provide that, in making a decision whether to reduce or waive fees, the director will give consideration to the fee waiver standard that is in place for judicial consideration of APRA requests: if “the information requested is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” R.I.G.L. §38-2-4(e).

Thank you for considering our views.